

Remarks

Applicants thank the Examiner for the very thorough consideration given the present application. Claims 1-12 and 14 are now in the application and claims 1 and 10 are independent. The Office Action dated September 2, 2009 has been received and carefully reviewed. Each issue raised in the Office Action is addressed below. Reconsideration and allowance of the present application are respectfully requested in view of the following remarks.

Priority Under 35 U.S.C. § 119

Applicants thank the Examiner for acknowledging Applicants' claim for foreign priority under 35 U.S.C. § 119, and receipt of the certified priority document.

Information Disclosure Citation

Applicants thank the Examiner for considering the references supplied with the Information Disclosure Statement filed July 27, 2006, and for providing Applicants with an initialed copy of the PTO-1449 form filed therewith.

Claim Objections

Claim 7 stands objected to because of an informality and the Examiner has provided some suggested claim language that would avoid the objection. Responsive to the objection, Applicants adopt the Examiner's helpful suggested language. Reconsideration and withdrawal of the objection are respectfully requested.

Claim Rejections – 35 U.S.C. 112, Second Paragraph

Claim 8 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for containing the phrase “such as.” While Applicants submit this would appear to be a *per se* rule prohibited by the MPEP, Applicants have nevertheless canceled the “such as” language. Reconsideration and withdrawal of the rejection are respectfully requested.

Claim Rejections – 35 U.S.C. 102

Claims 1-6 stand rejected under 35 U.S.C. § 102(b) as anticipated by FR 811,957 to Jagenberg-Werke. Applicants submit that the Examiner has failed to establish a *prima facie* case of anticipation and respectfully traverse the rejection. A complete discussion of the Examiner's rejection is set forth in the Office Action, and is not being repeated here.

In order to establish a *prima facie* case of anticipation under 35 U.S.C. § 102, the cited reference must teach or inherently include each and every element of the claims. See MPEP § 2131 and MPEP § 706.02.

While not conceding the appropriateness of the Examiner's rejection, but merely to advance prosecution of the instant application, Applicants respectfully submit that independent claim 1 has been amended to recite a combination of elements in a cup package including that the cup package can be opened by lifting the lid off and closed by pressing the lid back, the lid is in partially nested relationship with the cup, and attachment of the lid being based on friction and compression between the inner surface of the cup and the lid. Applicants respectfully submit that this combination of elements as set forth in independent claim 1 is not disclosed or made obvious by the prior art of record, including Jagenberg-Werke.

The Examiner states on page 3 of the Office Action that the cup package can be opened by lifting the lid off and closed by pressing the lid back. With all due respect, Applicants submit that is not accurate because the reference disclosure requires the lid to be screwed into the container. In order to make the distinction more clearly, Applicants have amended claim 1, the support for which can be found in the original application on page 2, at lines 24-26, among other places.

Amended claim 1 requires that the package can be closed by pressing the lid back and that attachment of the lid is based on friction and compression between the cup and lid. This is not the same as, and is more accurately substantially different from the cup and lid in Jagenberg-Werke, in which the cup and lid are threaded and the lid is attached to the mouth of the cup by screwing. In the instant invention, the lid is attached by pressing it down against frictional force, without any contribution from rotational movement, which would be heavily counteracted by friction. Indeed, it would appear that in Jagenberg-Werke that the lid is merely screwed until the cover engages an "inner net". Applicants respectfully submit that mere pressing of the lid would

be against the directed manner of usage in the reference, which is to turn the lid to bring the lid threads into a stopped or locking position. Furthermore, it would appear that any attempt to press in the lid of Jagenberg-Werke as alleged would likely damage or destroy the cup, or at least result in leakage as the screw motion is required to fully seat the lid within the threaded region. Thus, in Jagenberg-Werke, attachment of the lid is submitted not to be by means of friction and compression between the inner surface of the cup and the lid, as now claimed. Moreover, the claim requires the adjacent mouth rolls provided at the mouth of the cup and the edge of the lid acting as grips bases when the lid is opened. In Jagenberg-Werke it is clear that the edges of the mouth of the cup and the edge of the lid do not form mouth rolls acting as grip bases when the lid is opened, because both of these features are not accessible to the fingers to permit this function because of the close relationship shown in the drawings. Note again that in the reference it would appear necessary to grip the bottom of the cup for lid removal because the edge of the mouth of the cup is not accessible.

Applicants respectfully submit that in the instant invention the mouth rolls form a convenient gripping base for the fingers of both hands, particularly when the lid is opened by pulling. In the cup package according to the reference, such a grip would hinder twisting of the hands as required for opening the thread connection. This feature is neither shown nor suggested by Jagenberg-Werke.

Applicants respectfully submit that the combination of elements as set forth in independent claim 1 is not disclosed or made obvious by the prior art of record, including Jagenberg-Werke, for the reasons explained above. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

With regard to dependent claims 2-6, Applicants submit that dependent claims 2-6 depend, either directly or indirectly, from independent claim 1 which is allowable for the reasons set forth above, and therefore claims 2-6 are allowable based at least on their dependence from claim 1. Reconsideration and allowance thereof are respectfully requested.

Claim Rejections – 35 U.S.C. § 103

Claims 7 and 8 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Jagenberg-Werke in view of U.S. Pat. No. 3,349,941 to Wanderer. Applicants submit the Examiner has

failed to establish a *prima facie* case of obviousness and respectfully traverses the rejection. A complete discussion of the Examiner's rejection is set forth in the Office Action, and is not being repeated here.

In order to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), the cited references must teach or suggest each and every element in the claims. See MPEP § 706.02(j) and MPEP §§ 2141-2144.

Wanderer has been cited to show a smaller sized cup in partial nested relationship with a larger cup. However, it is noted that Wanderer shows a lid 16 being friction fit to an inner container 14 in such a manner that the rim or lip portions 24, 48 and 88 are nested as seen in Figures 3 and 4, and are therefore these rim or lip portions are not accessible for lid removal, as claimed. Therefore, Wanderer cannot remedy this defect in Jagenberg-Werke as discussed above. Reconsideration and withdrawal of this rejection are respectfully requested.

Claims 9-11 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Jagenberg-Werke in view of U.S. Pat. No. 6,136,396 to Gilmer. Claim 12 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Jagenberg-Werke in view of Gilmer, and further in view of Wanderer. These rejections are also respectfully traversed. Gilmer was cited to show the cup and lid made of polymer coated board. However, with respect to claim 9, Gilmer fails to show or suggest that the cup package can be opened by lifting the lid (2) off and closed by pressing the lid (2) back, the lid (2) is in partially nested relationship with the cup (1), attachment of the lid being based on friction and compression between the inner surface of the cup and the lid, and in that adjacent mouth rolls (5, 8) are provided at the mouth of the cup and the edge of the lid, the mouth rolls acting as grip bases when the lid is opened. Therefore Gilmer cannot remedy the defects of Jagenberg-Werke as discussed above with respect to claim 1. With respect to claim 10, Applicants note that claim 10 requires, *inter alia*, the lid (2) is formed for closing the mouth of the cup by connecting a principally discoid centre (6) with a sleeve-like frame (7) partially nested in the cup mantle and by equipping the edge of the frame with a surrounding mouth roll (8), the cup and the lid being substantially manufactured by mutually corresponding operations and the mouth rolls formed in the cup and the lid, which are adjacent each other in the closed package, serving as grip bases as the package is opened. As the Examiner has admitted, Jagenberg-Werke fails to show or suggest the formation of the lid for closing the mouth of the

cup by connecting a principally discoid centre with a sleeve like frame with a surrounding mouth roll. Jagenberg-Werke shows a cup made from a separate bottom and wall parts, but no lid made in a similar manner. Similarly, Gilmer also fails to show or suggest such features of a lid, it being noted that there is no lid in Gilmer at all and the bottom is formed, contrary to the Office Action by foam material connected by heat or adhesive as described in column 6 at lines 45-61. Thus, Gilmer fails to remedy the defects of Jagenberg-Werke, at the least as to the construction features of the lid. Applicant notes the reference to *In re Rose*, cited on page 7 of the Office Action to support the proposition that mere changes in size are obvious. This citation is not understood because the rejection is not predicated on a mere change in size. The rejection of record does not fail because the features of the claim are slightly different in size from those of the reference. The rejection of record fails because no prior art shows or suggests a cup lid manufactured in the manner recited in claim 10. Reconsideration and withdrawal of the rejection are respectfully requested. With regard to dependent claims 11 and 12, Applicants submit that dependent claims 11 and 12 depend, either directly or indirectly, from independent claim 10 which is allowable for the reasons set forth above, and therefore claims 11 and 12 are allowable based at least on their dependence from claim 10. Reconsideration and allowance thereof are respectfully requested.

New claim 14 has been presented to provide additional coverage for the invention, it being noted that it should be apparent that two cups may be partially nested without one of the cups necessarily being larger than the other, as in original claim 7. Consideration and allowance of claim 14 are respectfully requested.

Conclusion

All objections and rejections raised in the Office Action having been properly traversed and addressed, it is respectfully submitted that the present application is in condition for allowance. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Notice of same is earnestly solicited.

Prompt and favorable consideration of this Amendment is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Paul T. Sewell, Registration No. 61,784, at (703) 205-8000, in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

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